

**IN THE SUPREME COURT OF FLORIDA**

INQUIRY CONCERNING  
A JUDGE NO. 02-487

Supreme Court Case  
No.: SC03-1171

**RESPONDENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION  
IN LIMINE TO EXCLUDE EVIDENCE ON BEST EVIDENCE GROUNDS**

On August 25, 2004, the Honorable Gregory P. Holder (“Judge Holder” or “Respondent”) filed a Motion in Limine to Exclude Evidence on Best Evidence Grounds. In that motion, Respondent moved to exclude two black-and-white photocopies of what is alleged to be an Air War College paper authored by Respondent (“purported Holder papers”) because those copies violate Florida’s best evidence rule. Among other reasons, Respondent has explained why the copies are inadmissible because a “genuine question is raised about the authenticity” of the purported Holder papers.<sup>1</sup> § 90.953(2), Fla. Stat. During oral argument held on April 15, 2005, the Chairman of the Hearing Panel, Judge Kuder, ordered supplemental briefing on the issue of when a genuine question of authenticity is raised under section 90.953(2) of the best evidence rule set forth in the Florida Evidence Code.

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<sup>1</sup> In addition, Respondent has moved to exclude the purported Holder paper under the best evidence rule because the Special Counsel has not established that the copies are “duplicates” of the paper that Judge Holder actually submitted to the Air War College and because it is unfair under the circumstances to admit the photocopies. *See* Mot. in Limine to Exclude Evidence on Best Evidence Grounds at pp. 4-6, 9-10 (filed Aug. 25, 2004).

## **I. FACTS.**

A detailed factual background concerning the purported Holder paper is set forth in Respondent's Motion in Limine to Exclude Evidence on Due Process Grounds and Supporting Memorandum of Law ("Due Process Mot.") and is incorporated by this reference.

## **II. THE BEST EVIDENCE RULE PREVENTS FABRICATION AND FRAUD.**

The best evidence rule requires the production of an original writing in order to promote accurate fact-finding and provide a safeguard against unreliable and fabricated documents. *See* Ehrhardt, Florida. Evidence § 952.1 (2004 Edition). As one commentator on Florida's best evidence rule has noted, the rule exists to "prevent fraud," "permit opponents to examine the original document," and "prevent errors that might result from the use of secondary evidence." D. Henniger, Best Evidence Rule, Evidence in Florida § 11-1 (Fla. Bar 2002); *see also* *U.S. v. Howard*, 953 F.2d 610, 613 (11th Cir. 1992) ("The best evidence rule presupposes the existence at one time of a decipherable original, and is intended to prevent fraud in proving the contents of documents and/or recordings."). In short, "it has long been observed that the opportunity to inspect original writings may be of substantial importance in the detection of fraud." McCormick on Evidence § 231 (2003).

The McCormick evidence treatise explains why originals are preferable to copies despite the accuracy of modern photocopiers:

[C]opies produced by photographic or xerographic processes are not totally as desirable as the original writing. Many indicia of putative fraud such as watermarks, types of paper and inks, etc., will not be discernable on the copy.

McCormick on Evidence § 236 (2003). Thus, when a party calls into question the authenticity of a photocopy, the best evidence rule only permits the introduction of an original document.

### **III. THE BEST EVIDENCE RULE REQUIRES THE EXCLUSION OF THE PURPORTED HOLDER PAPER BECAUSE RESPONDENT HAS RAISED A GENUINE QUESTION OF AUTHENTICITY.**

In light of the concerns regarding document fraud and forgery, Florida's best evidence rule embodies a preference for the admission of original writing over duplicates. *See* § 90.952, Fla. Stat. ("Except as otherwise provided by statute, an original writing ... is required in order to prove the contents of the writing"). At the same time, the rule recognizes the ubiquity and convenience of photocopies and, relatedly, the fact that parties frequently do not challenge the authenticity of photocopies. Accordingly, the best evidence rule permits parties to introduce duplicates into evidence under certain circumstances. *See* § 90.953, Fla. Stat.

The best evidence rule, however, specifically prohibits the admission of duplicates where the risk of fraud exists. Specifically, a duplicate is not admissible

if a “genuine question is raised about the authenticity of the original or any other document or writing.” § 90.953(2), Fla. Stat.; *see also Van Den Borre v. State*, 596 So. 2d 687, 690 (Fla. 4th DCA 1992) (“Although the Florida Evidence Code allows duplicates to be admitted in evidence, a genuine question about the authenticity of the *original* will prevent the admission of the duplicate”). The party opposing admission has the burden to establish the existence of a genuine question. *See State Farm Mut. Auto. Ins. Co. v. Resnick*, 636 So. 2d 75, 76 (Fla. 3d DCA 1994).

While courts have not precisely specified when a genuine question exists, a leading treatise on Florida evidence explains when a party raises a genuine question:

If there is a genuine question concerning the authenticity of the duplicate, the duplicate is not admissible under section 90.953(2). For example, if a defendant alleges that he did not sign a contract upon which the plaintiff sued, but rather signed a different contract, a genuine question is “raised about the authenticity of the original” and the duplicate is not admissible under section 90.953(2).

Ehrhardt, Florida Evidence § 953.1 (2004 Edition) (internal footnote omitted).<sup>2</sup>

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<sup>2</sup> Professor Ehrhardt’s observation regarding the interpretation of the best evidence rule’s “genuine question” language is consistent with the judicial interpretation given to the phrase “genuine issue” in the summary judgment context. A court should deny summary judgment unless “there is no genuine issue as to any material fact.” Fla. R. Civ. P. 1.510(c). A genuine issue exists, however, “even when the facts are uncontroverted, ... if different inferences can be (continued)

Accordingly, Erhardt explains that a genuine question of authenticity is raised when the opponent of admission denies the document's authenticity.

Respondent has gone well beyond this standard in raising a genuine question regarding the authenticity of the purported Holder paper.<sup>3</sup> Indeed, it is at best wishful thinking to deny the existence of a genuine question of authenticity in this case. Five witnesses—the *only* witnesses that reviewed Judge Holder's actual Air War College paper at the time he submitted it—all have given sworn statements that are flatly inconsistent with the purported Holder paper being authentic. *See* Dep. of Judge Holder at Appendix 1. (testifying that he did not "recognize any part of this [purported Holder] paper as being [his] work."); Aff. of Lt. Col. Russick ¶ 9 at Appendix 1. ("I can unequivocally state that I had never before read the alleged Holder AWC paper. The paper alleged to be Col. Holder's is not the same one I read in 1998."); Aff. of Vento ¶ 9 at Appendix 1. ("[I] reviewed the [purported Holder paper] and do not believe that the paper that I received from Judge Holder and read in 1998 was as sloppy and poorly written as the alleged Holder paper."); Aff. of Lawson ¶ 7 at Appendix 1. ("The papers did appear to be different papers

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drawn reasonably from those facts." *Hervey v. Alfonso*, 650 So.2d 644, 646 (Fla. 2d DCA 1995).

<sup>3</sup> In a Report accompanying the analogous federal rule of evidence, the United States House of Representatives explained the legislature's "expectation that the courts would be liberal in deciding that a 'genuine question is raised as to the authenticity of the original.'" House Report No. 93-650 (cited in Advisory Cmte. Note to Fed. R. Evid. 1003 (1974)).

and I did not notice any similarities.”); Aff. of Nasco, June 27, 2003, ¶ 15 at Appendix 1. (“I have carefully looked at the [purported Holder paper] ... [and] do not recognize the paper as the one I typed for [Holder].”).

By contrast, the Special Counsel to the JQC has no witness who can testify that the purported Holder paper is, in fact, the paper that Judge Holder authored and submitted to the Air War College. The Special Counsel has admitted that it:

[H]as no witness who can testify based on personal knowledge that [the purported Holder paper] is an authentic copy of the actual paper that respondent submitted to the Air War College in January 1998.

Resp. to Resp.’s 1st Req. for Admissions at ¶ 1. Rather, the only direct testimony in this case is from witnesses who testify that the purported Holder paper cannot be the paper that Judge Holder submitted to the Air War College.

Even putting aside the tremendous disparity in direct testimony, other courts have found that a genuine question of authenticity is raised by circumstantial evidence similar to that which exists in this case. For example, in *Osswald v. Anderson*, the California Court of Appeal excluded evidence finding that the defendant had raised “genuine questions” regarding the authenticity of the proffered evidence. *See* 57 Cal. Rptr. 2d 23, 27 (Cal. Ct. App. 1996) (applying California Evidence Code § 1511, which is substantially similar to Florida’s best

evidence rule).<sup>4</sup> The dispute in *Osswald* centered on a deed, which was lost. Plaintiff sought to admit an alleged photocopy of the deed, which largely appeared to be authentic. The copy contained the signatures of the prior landowners, it was notarized by the landowner's lawyer's secretary, and concerned property owned by the grantors. *See id.* at 24. The court, however, concluded that the copy was inadmissible under the best evidence rule because the opponent of the evidence "raised genuine questions regarding the authenticity of the original deed." *Id.* at 27. First, the court noted that the deed itself was not found in the expected place: the file of the author of the document. *Id.* Second, the person who possessed the evidence could not explain its source: he testified that he "did not know where he got the copy."<sup>5</sup> *Id.* Third, "the holes punched in the copy were not consistent with [the lawyer's] office procedure." *Id.* at 24.<sup>6</sup> Given the genuine question of

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<sup>4</sup> At the time *Osswald* was decided, section 1511 provided that "[a] duplicate is admissible to the same extent as an original unless (a) a *genuine question is raised as to the authenticity of the original* or (b) in the circumstances it would be unfair to admit the duplicate in lieu of the original" (emphasis added). California's best evidence rule, now referred to as the "secondary evidence rule," is codified at section 1521(a) ("The court shall exclude secondary evidence of the content of writing if the court determines . . . [a] genuine dispute exists concerning material terms of the writing and justice requires the exclusion.").

<sup>5</sup> Likewise, in *In re Porras*, the court excluded a photocopy of a letter, noting that "[w]here there is a possibility of fraud in the circumstances surrounding the execution of a writing, the reliability of the duplicate is impaired and the court may insist on the original if the opponent demands it." 224 B.R. 367, 371 (Bankr. W.D. Tex. 1998). The court explained that a possibility of fraud existed in part because the letter "suddenly appears with no explanation as to why it has not appeared previously and no explanation as to why the original is not produced." *Id.*

<sup>6</sup> The court also dismissed the significance of the signatures and notarization on the photocopy: "It would be a simple matter to transfer the signatures and notary block to a different property (continued)

authenticity, the court reversed the trial court, which had erroneously admitted the duplicate deed into evidence.

Similarly, in *United States v. Haddock*, the Tenth Circuit cautioned trial courts to “be wary of admitting duplicates where the circumstances surrounding the execution of the writing present a substantial possibility of fraud.” 956 F.2d 1534, 1545 (10th Cir. 1992) (internal citation omitted), overruled on other grounds by *U.S. v. Gaudin*, 515 U.S. 506 (1995). In *Haddock*, the court upheld the exclusion of photocopies of six documents, noting that “no one—including in some cases persons who allegedly typed the document and persons to whom the original allegedly was sent—was familiar with the content of the photocopies.” *Haddock*, 956 F.2d at 1545-46. Moreover, several witnesses testified that markings and statements on the photocopies did not comport with similar documents prepared in the ordinary course of business. *See id.* at 1546.

The facts in support of exclusion of the purported Holder paper greatly exceed those held to be sufficient in *Osswald* and *Haddock*. As in *Osswald*, the purported Holder paper was not found in a normal location—it was not found in Judge Holder’s or the Air War College’s possession. Instead, as in *Osswald* and *Haddock*, the possessor of the evidence could not explain the source of the

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description and with a good photocopy machine create what appeared to be a copy of a valid deed.” *Osswald*, 57 Cal. Rptr. 2d at 27.



document. The purported Holder paper was allegedly delivered under suspicious circumstances to a limited access Army Reserve Headquarters, along with an anonymous note and an envelope, both of which have disappeared without explanation.<sup>7</sup> See Aff. of Jeffrey J. Del Fuoco (Mar. 10, 2003); Dep. of Jeff Downing at p. 14-15. Further, as in *Osswald* and *Haddock*, the appearance of the purported Holder paper itself calls into question the authenticity of the document. While the standard procedure for the Air War College is to time and date stamp a submitted paper upon receipt, the purported Holder paper bears no such stamp. See Dep. of Charles Howard at Appendix 2. Moreover, the Air War College grader testified that his usual practice was to write comments and a student grade at the end of the submitted paper. See Dep. of Lt. Col. Howe at Appendix 3. The purported Holder paper lacks both comments and a grade. The grader conceded that these anomalies render the purported Holder paper “unusual.” See Dep. of Lt. Col. Howe (quoting Howe affidavit) at Appendix 3. Similarly, the grader testified that the paper is returned with a signed typed letter giving formal remarks and listing the student’s grade. See *id.* The purported Holder paper, however, lacks such a letter.

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<sup>7</sup> The loss of this important evidence is the subject of Respondent’s Motion to Dismiss the Pending Charges or in Limine to Exclude the Purported Holder Paper and Hoard Paper Based on Evidentiary Improprieties (filed March 18, 2005).

As the *Osswald* and *Haddock* courts held, such circumstantial anomalies themselves are sufficient to raise a genuine question of authenticity and result in the exclusion of a proffered photocopy. Here, however, the circumstantial evidence calling into question the authenticity of the purported Holder paper is directly bolstered by the testimony of five eyewitnesses to Judge Holder's actual Air War College paper—three of whom were military officers and members of the Bar. All of these eyewitnesses have testified that the purported Holder paper is not the paper they reviewed in 1998. Both the direct and circumstantial evidence in this case establishes that, at a bare minimum, Respondent has raised a genuine question regarding the authenticity of the purported Holder paper. For this reason, the paper must be excluded from evidence under § 90.953(2) of the Florida Evidence Code.

*(attorneys signature appears on next page)*

Dated: April 25, 2005

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David B. Weinstein', is written over a horizontal line.

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### CERTIFICATE OF SERVICE

I certify that on April 25, 2005, a copy of the foregoing Respondent's Supplemental Brief in Support of Motion in Limine to Exclude Evidence on Best Evidence Grounds has been served by regular U.S. mail to Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.



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Attorney

**IN THE SUPREME COURT OF FLORIDA**

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A JUDGE NO. 02-487

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**APPENDIX TO  
RESPONDENT'S SUPPLEMENTAL BRIEF IN  
SUPPORT OF MOTION IN LIMINE TO EXCLUDE  
EVIDENCE ON BEST EVIDENCE GROUNDS**

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### **Appendix 1**

- A. Excerpt from Deposition of Circuit Judge Gregory P. Holder, November 5, 2003  
20:14-23
- B. Affidavit of Lt Col James C. Russick, August 5, 2003
- C. Affidavit of John Sebastian Vento, August 5, 2003
- D. Affidavit of Kenneth E. Lawson, November 14, 2003
- E. Affidavit of Lorraine Nasco, June 27, 2003

### **Appendix 2**

- A. Excerpt from Deposition of Lt Col Charles A. Howard, November 19, 2003  
33:8-13

### **Appendix 3**

- A. Excerpt from Deposition of Lt Col William O. Howe, November 20, 2003  
16: 15-25  
17:1-8  
43:12-17







BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A  
JUDGE: GREGORY P. HOLDER  
NO.: 02-487

SUPREME COURT  
CASE NO.: SC03-1171

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DEPOSITION OF CIRCUIT JUDGE GREGORY P. HOLDER

November 5, 2003

Commencing at 10:00 a.m.

**Page 20**

Line:

14 Q. Having looked through the paper, do you  
15 recognize any part of this paper as being your  
16 work?

17 A. No.

18 Q. None?

19 A. None.

20 Q. And you've been over it carefully enough  
21 that you can state that positively?

22 A. I can state positively I have no  
23 recollection of this paper.



**AFFIDAVIT**  
**Lt. Col. James C. Russick, USAFR**

I, **JAMES C. RUSSICK**, being first duly sworn, hereby depose and state:

1. This affidavit is submitted in support of Col. Gregory P. Holder, an officer I have known and worked with closely as members of the Reserve service to the Air Force. I am competent to make this Affidavit and do so based on personal knowledge of the following facts.

2. I was commissioned in the United States Air Force on June 1, 1974, having participated in the ROTC program at Denison University in Granville, Ohio. I served in the Air Force for more than 24 years, and retired as a Lt. Col. My active duty assignments have included serving as the Chief of the Civil Law Division at MacDill Air Force Base, Tampa, Florida, and as Chief of Claims and later as Area Defense Counsel at Misawa Air Force Base, Misawa, Japan. Upon my separation from active duty, I served in the Air Force Reserves as a Judge Advocate until my retirement as a Lt. Col. in May, 2003.

3. I received an educational deferment to attend law school. I graduated from Pepperdine University School of Law, Malibu, California in May of 1977, and passed the Ohio Bar exam that year. I commenced active duty service in January of 1978 and was assigned to MacDill AFB, Tampa, Florida. I took the Florida Bar exam while stationed at MacDill and was admitted to the Florida Bar in January 1980.

4. I am currently Florida State Counsel for Old Republic National Title Insurance Company in Tampa, Florida. I have been a Board Certified Real Property practitioner since 1997. I am a past Director of the Florida Land Title Association. I currently serve on the Government Affairs Judiciary Committee and have been the past chairman of that body. The Insurance Commissioner of the State of Florida appointed me as a member of the Sunset Review Committee, to rewrite the Florida title insurance statutes. I am a member of the Title Standards Committee of the Florida Bar.

5. I am familiar with Colonel Holder's educational and military background. I know that he graduated from the United States Military Academy at West Point in 1975, and that he served on active duty with the Air Force as a judge advocate before transferring, as did I, to the Air Force Reserve.

6. I have known Col. Holder for approximately 15 years. When we met, he was on active duty as a Major and the Chief of Military Justice at MacDill AFB. Later we were classmates at the 1998 Air War College courses at MacDill Air Force Base, Tampa, Florida.

7. Through articles in local newspapers, I recently became aware that the Air Force and the Florida Judicial Qualifications Commission have received, from an anonymous source, a copy of an Air War College paper allegedly written by Col. Holder which contains portions allegedly plagiarized from a document originally written by Col. E. David Hoard, who also is well known to me. I promptly contacted Col. Holder to remind him that he had shown me his Air War College paper in 1998.

8. I recall that Col. Holder and I were both going to write on the World War II bombing campaign in Europe and had gone to the library together and started our research. I intended to submit my paper during the same session, as did then-Lt. Col. Holder, but I did not complete the assignment due to my Mother's failing health and subsequent death. I specifically recall that then-Lt. Col. Holder and I were in the AWC classroom at MacDill speaking about the AWC assignment one evening before class. I specifically recall asking him about the format required of the AWC for this assignment. Then-Lt. Col. Holder responded by saying to me, "Here's mine. Take a look." He then gave me a "clean" copy of the paper, which he had recently submitted to the AWC. I specifically recall that there were no comments or extraneous writings on the document. I specifically recall that Col. Holder's paper was superior to the paper I had prepared. Consequently, I thought to myself, "I hope that mine passes."


9. Consistent with my position as a title attorney, I am very much a detail-oriented person and thought I might be able to identify Col. Holder's paper from having previously read it. Accordingly, at the request of Col. Holder's civilian trial counsel, I have reviewed the AWC paper alleged to be Col. Holder's. I can unequivocally state that I had never before read the alleged Holder AWC paper. The paper alleged to be Col. Holder's is not the same one that I read in 1998.

10. I also note that I know Col. E. David Hoard as well, but I have never received or read Col. Hoard's paper.

11. I eventually submitted an AWC paper and I recall only that I received a satisfactory grade. I do not recall the final topic I selected and have looked for, but no longer have, my AWC paper. I do not recall further discussions with Col. Holder as to either of our AWC submissions. This was one assignment among many.

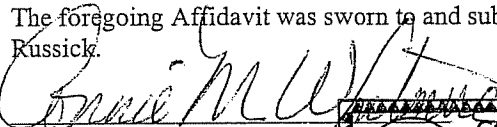
12. At no time have I ever observed any behavior by Col. Holder that was inconsistent with the highest standards for officers, judge advocates, and judges. Col. Holder has a strong work ethic that is unsurpassed by any other officer I know. Shortcuts are not part of his make-up. I have been informed that others who read Col. Holder's paper, and even Col. Holder himself, did not believe that the paper was as good as his usual work product. I can only say that I thought his paper was better than mine. Given the constraints on Col. Holder's time, it would not be surprising if he felt he did not spend enough time on the paper.

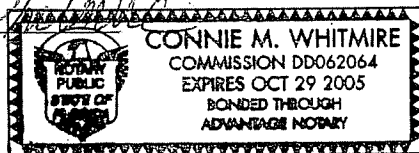
13. Residents of this community, myself included, are well aware of the "courthouse controversy" involving the actions of several other judges and their interaction with and impact on Col. Holder. The strength of the feelings this has engendered regarding Col. Holder should not be underestimated by those not familiar with this situation.

  
JAMES C. RUSSICK, Lt. Col., USAFR

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing Affidavit was sworn to and subscribed before me this 5th day of August 2003, by James C. Russick.

  
Notary Public  
State of Florida



My Commission expires \_\_\_\_\_  
Personally known or produced the following identification \_\_\_\_\_

NOTARY PUBLIC  
STATE OF FLORIDA  
COMMISSION DD062064  
EXPIRES OCT 29 2005  
BONDED THROUGH  
ADVANTAGE NOTARY



**AFFIDAVIT**  
**John Sebastian Vento**

I, John Sebastian Vento, being first duly sworn, depose and state:

1. My name is John Sebastian Vento. I am a shareholder at the Tampa law firm of Trenam Kemker and have been practicing law since 1974. I am also a Colonel in the United States Air Force Reserve. I am competent to make this Affidavit and do so based on personal knowledge of the following facts.

2. I have known Judge Gregory P. Holder for approximately 14 years. I have known him as a prominent member of the Tampa judiciary and as an active member of the legal community. We became acquainted in 1988, while assigned to the U.S. Special Operations Command as Judge Advocates. Based on my experience Judge Holder is honest, ethical, and honorable. My law partners and I know him as one who would never do anything to compromise his integrity. He lives up to his West Point training and prides himself on being a member of the JAG Corps.

3. I took the Air War College course ("AWC") in 1995, prior to Judge Holder. In April of 1995, I wrote an in depth analysis entitled "Evaluation of the Linebacker II Air Campaign During the Vietnam War – Isolated Success or Strategic Failure?" This paper was returned to me because it was more involved than the instructor thought was appropriate for the assignment. In fact, the instructor told me "You didn't answer the mail – we don't want anything this complex – just tell us how many bombs were dropped on what day, how the tactics changed – you know, approach it like a pilot" or words to that effect. Accordingly, I modified the paper to make it significantly simpler, submitted it in May 1995, and received a satisfactory grade.

4. Prior to writing my AWC paper, I obtained a copy of at least one other AWC paper from another officer who had taken AWC, so that I could see what type of paper the course required and what a completed AWC paper should look like. The AWC requirements for the form of the paper are complicated and are very different from those utilized in preparing briefs and other legal documents.

5. Both my legal secretary and I reviewed the instructions provided by the AWC, including those concerning the required form for the paper. Even after carefully reviewing these instructions, my legal secretary was still confused about the required form and, consequently, she told me "You had better show me a copy of someone else's paper so I can see what it is supposed to look like," or words to that effect. Even though I did so, and my secretary and I tried to comply with AWC requirements, when I received my first paper back from the AWC the instructor had noted form errors on the paper. There were even noted form errors on my final satisfactory grade paper – that's how particular they are about form and how different it is to what we are used to as lawyers.

6. Based on my experience with my AWC paper, when Judge Holder took the AWC course, I advised him that the research paper should be "written like a pilot would write it

not a lawyer" or words to that effect, and advised that what they wanted was not in depth analysis or evaluation but to follow the analysis model and give the number of bombs dropped, changes in tactics, etc. I cautioned him not make the same mistake that I did by writing a paper that was too complex – to make it simple. I told him to get a few books from the SOCOM library, read them, and spend no more than 8-10 hours on writing the paper and to pay particular attention to form – to follow it strictly.

7. After Judge Holder wrote his AWC paper, he sent a copy of it to me. Judge Holder is well aware that Colonel E. David Hoard and I are good friends and, therefore, it was very possible that I would have had a copy of Col. Hoard's paper, as well. Based on my 14 years of experience with Judge Holder, including in the Air Force and in the civilian legal community in Tampa, I do not believe that he would plagiarize someone else's AWC paper. Moreover, I do not believe that anyone who plagiarized a paper written by Col. Hoard would send a copy of that paper to me, in light of my relationship with Col. Hoard.

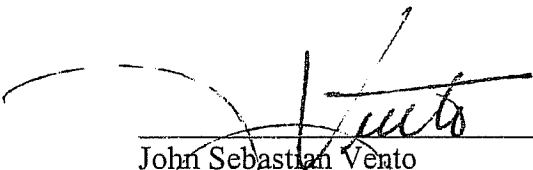
8. I read Judge Holder's paper shortly after receiving it from him. I recall thinking that it was not as good as I would have expected from Judge Holder, having seen the products of his legal work at USSOCOM; but I believe that was because I had told him about my experience, as summarized in paragraph 3, above, and advised Judge Holder to write and submit an uncomplicated paper, as summarized in paragraph 6, above.

9. I have reviewed the paper that is alleged to be Judge Holder's and do not believe that the paper that I received from Judge Holder and read in 1998 was as sloppy and poorly written as the alleged Holder paper. I believe if it was I would have called and warned him that his paper would probably be returned. Due to the passage of time, I cannot recall the content of Judge Holder's original paper. However, I can say that if Judge Holder's paper had been as bad as the alleged Holder paper that I have recently read, I would certainly have discussed this with him and did not, in fact, do so. Consequently, based on my knowledge of Judge Holder and my recollection that his AWC paper was not as bad as the alleged Holder paper, I do not believe that Judge Holder plagiarized this paper.

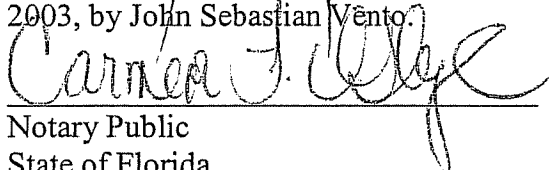
10. As I have informed the Special Counsel to the Florida Judicial Qualifications Commission, all AWC candidates are sternly warned against plagiarism. The AWC Program Guide directive states: "Violation of academic integrity is grounds for immediate and permanent disenrollment from the AWC. Further disciplinary or punitive actions will be at the discretion of the student's commander." I also have informed the Special Counsel that, in addition to the adverse consequences referenced above, anyone would be foolish to engage in plagiarism because a satisfactory AWC paper would only take a dozen or so hours to complete, including reading on the subject; not to mention copying a paper that was submitted just one year before with the chance you might draw the same grader.

11. Additionally, I note that the paper alleged to be Judge Holder's does not contain an AWC stamp as do both of the papers that I submitted do, and later received back from,

the AWC. Every AWC paper that I have seen contains such a stamp. Moreover, the purported Holder paper does not have the AWC Associate Programs Student Research Evaluation cover sheet (AU Form 516), which would accompany a genuine AWC paper. Based on these two significant departures from well-established AWC operational procedure, alone, I do not believe that the paper alleged to be Judge Holder's is genuine and authentic. Based on the foregoing, any reasonable person familiar with the AWC would have good reason to doubt the authenticity of the purported Holder paper.

  
\_\_\_\_\_  
John Sebastian Vento

The foregoing Affidavit was sworn to and subscribed before me this 15<sup>th</sup> day of August 2003, by John Sebastian Vento.

  
\_\_\_\_\_  
Notary Public  
State of Florida

My Commission expires \_\_\_\_\_

Personally known \_\_\_\_\_ or produced the following identification \_\_\_\_\_



Carmen F Glye  
My Commission DD045570  
Expires July 29, 2005





### AFFIDAVIT OF KENNETH E. LAWSON

1. My name is Kenneth Eric Lawson. From March 26, 2002 until March 8, 2003, I was Assistant Secretary for Enforcement of the United States Treasury Department. Prior to and following that appointment, I have been a prosecutor with the Office of the United States Attorney, Middle District of Florida, Tampa, Florida, where I resided for seven years. I was Special Assistant United States Attorney for the Eastern District of North Carolina while I served in the Marine Corps. I have been practicing law for approximately eleven years.
2. I am a graduate of Florida State University and Florida State University School of Law and served in the United States Marine Corps as a military prosecutor. I was on active duty from October 1991 to November 1993 and served as a Reserve Officer from November 1994 to January 1999.
3. I am competent to make this Affidavit and do so based on personal knowledge of the following facts.
4. I have been acquainted with Judge Gregory P. Holder since 1996. I was aware that he was a West Point graduate and that he later served in the United States Air Force. I was aware that he participated in Air War College ("AWC") and that he has achieved the rank of Colonel. I am aware of the controversy and allegations of plagiarism with regard to Judge Holder's AWC research paper submitted to the Air Force in January 1998. I am aware that this Air Force controversy has lead to the filing of Formal Charges by the Florida Judicial Qualifications Commission.
5. I have been questioned in a telephone conversation by Charles Pillans, Esq., counsel to the Florida Judicial Qualifications Commission Investigative Panel, as to my personal knowledge of certain related facts.
6. In late 1997 I contemplated participating in Air War College and had several conversations with Judge Holder on that topic. I was curious as to the time and writing requirements involved in the course. During telephone conversations in December Judge Holder volunteered that he had his first session "dirty purples" and would

copy them for me to review. He also volunteered that he had his recently-submitted Air War College paper as well as one from a friend of his if I wanted to see samples. He volunteered to have them copied and that I could pick them up at his new office at the Hillsborough County Main Courthouse building.

7. On a weekday evening after the close of business in early January 1998 I stopped at Judge Holder's office at the Courthouse and retrieved the documents, as per my conversation with Judge Holder. I recall seeing Judge Holder's AWC paper without a grade or other markings. I recall a paper by another AWC participant - also without a grade or markings. I viewed both papers, but did not "study" the papers in any detail. The papers did appear to be different papers and I did not notice any similarities.
8. Although I enrolled in the AWC program, I did not complete the program. In approximately September 2000 I discarded the copies of the AWC papers which I had received from Judge Holder.
9. I have known Jeffrey Del Fuoco for nine years and became acquainted him in the Office of the United States Attorney, Middle District of Florida. I know that when I was serving as a reserve officer in the United States Marine Corps Mr. Del Fuoco was serving as a reserve officer in the United States Army.
10. I recall that Jeffrey Del Fuoco was interested in the AWC program and I had several personal conversations with him on the topic. In fact, I raised the subject of enrolling in AWC with Mr. Del Fuoco to further his status as a reserve officer in the Army.
11. Although I gave Jeffrey Del Fuoco copies of the "dirty purples" and the papers, I never received from any source and/or gave to Jeffrey Del Fuoco a copy of an AWC paper written by Judge Holder containing a grade or any other markings.
12. I never received from any source and/or gave to Jeffrey Del Fuoco a copy of an AWC paper written by then-Lt. Col. Mary V. Perry which contained a grade or other markings.

13. I had not been acquainted with then-Lt. Col. Perry and, in fact, was introduced to her for the first time within the past two years when she was a Colonel.

FURTHER AFFIANT SAYETH NOT



KENNETH E. LAWSON

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me, this 14<sup>th</sup> day of November, 2003, by KENNETH E. LAWSON, who is personally known to me or has produced \_\_\_\_\_ as a form of identification.



Virginia M. Zock  
MY COMMISSION # DD058031 EXPIRES  
September 18, 2005  
BONDED THRU TROY FAIN INSURANCE, INC



Notary Public  
State of Florida

My Commission expires 9/18/05



## **AFFIDAVIT OF LORRAINE NASCO**

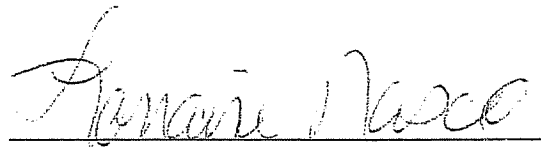
### **STATE OF FLORIDA COUNTY OF HILLSBOROUGH**

BEFORE ME, the undersigned Notary Public, personally came and appeared

**LORRAINE NASCO**, a resident of the full age of majority, who, being duly sworn, deposed and said:

1. I was the Judicial Assistant to Judge Gregory P. Holder, Circuit Judge at the Hillsborough County Courthouse in Tampa, Florida, from December 1994 until May 31, 2002, when I went on sick leave.
2. I became familiar with the controversy over Judge Holder's Air War College paper dated January 1998 when I was shown the papers in question several months ago.
3. Judge Holder worked on this project in December 1997 at his offices in the Courthouse. I specifically remember Judge Holder reading and researching from the war books.
4. Although he is a very good and fast typist, he was working on other documents while I concentrated on the paper. I typed Judge Holder's paper on my computer at the Courthouse.
5. At some times Judge Holder dictated material on micro-cassette recorder and gave me the cassette to transcribe. I call the cassette a disk. At some other times Judge Holder hand wrote pages for me to input. For this paper, I had both handwritten pages and dictation.
6. Judge Holder gave me a paper to use as a model for the proper format.
7. I specifically remember typing the table of contents of Judge Holder's war paper because I had trouble making the entries line up properly.
8. It was very close to the deadline when I printed out the entire paper for the first time. Judge Holder had to make many edits. He indicated the changes and corrections and told me to make them and print out the final copy.
9. I made the changes.
10. I do not recall that Judge Holder reviewed the paper before I mailed it.
11. It was not unusual that Judge Holder did not review the work after he had given me corrections or edits. We had worked closely for several years and Judge Holder trusted me to get it right.

12. I did not read the paper as I typed it or afterwards. I do not like history and am not interested in it or in war materials.
13. I did not read the example paper Judge Holder gave me either. I did not read or compare Judge Holder's paper with the example paper. This whole task was quite a chore with everything else that we had to do and with our big move from the Juvenile Division to the Civil Division.
14. I did not delete the Air War College paper I typed for Judge Holder from my Courthouse computer.
15. I have carefully looked at the paper which is supposed to be Judge Holder's. I do not recognize the paper which is supposed to be Judge Holder's as the one I typed for him.
16. I am well acquainted with Judge Holder's work habits and character and the "purported" paper is not the quality which our office would produce or submit under any set of circumstances.
17. Judge Holder has always been very honest and ethical. Additionally, he writes well, is very smart, and would never need to use someone-else's work.

  
LORRAINE NASCO

SWORN TO AND SUBSCRIBED before me, Notary, at Tampa, Florida, this 27<sup>th</sup> ay of June, 2003.



Notary Public

State of Florida

My Commission Expires:



Antonette I Swoboda

My Commission DD162626

Expires November 15, 2006







BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A  
JUDGE: GREGORY P. HOLDER  
NO.: 02-487

SUPREME COURT  
CASE NO.: SC03-1171

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DEPOSITION OF LT COL CHARLES A. HOWARD  
November 19, 2003  
Commencing at 10:00 a.m.

**Page 33**

Lines:

- 8 Q Would the paper -- When it's received in the  
9 mail, would it receive -- the hard copy,  
10 would it be stamped on the date it's  
11 received?  
12 A It should have been stamped with the date  
13 received.





BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A  
JUDGE: GREGORY P. HOLDER  
NO.: 02-487

SUPREME COURT  
CASE NO.: SC03-1171

DEPOSITION OF LT COL WILLIAM O. HOWE  
November 20, 2003  
Commencing at 9:40 a.m.

**Pages 16-17**

Lines:

13     **Q. What would you do with the paper after**  
14     **you had completed your grading of it?**

15     A. I would usually on the very last sheet  
16     of the paper write -- of the narrative, write  
17     whether the paper was sat., unsat., excellent,  
18     outstanding. There may be a brief comment in  
19     longhand, but that wasn't a requirement, the  
20     program requirement. And that was sent -- with  
21     every paper was a typed letter signed by me  
22     giving them their official grade and basically a  
23     summary of why I graded their paper the way I  
24     did.

25     **Q. And would a copy of that then be sent**  
1     **back to the --**

2     A. It would have been sent to the  
3     student, and a copy would have been kept there  
4     at the War College with their paper.

5     **Q. The copy of the paper with your**  
6     **handwritten comments, would that have gone back**  
7     **to the student also?**

8     A. Yes.

**Page 43**

Lines:

12    It was my standard procedure to write personal  
13    comments to the student and/or to place a grade

14 on the last page of the AWC papers that I  
15 graded. Therefore, I find their absence to be  
16 unusual." Is that accurate, sir?  
17 A. That's accurate.